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July ___, 2012

REVISED DRAFT—JULY 9, 2012

**PRIVILEGED AND CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION
AND ATTORNEY WORK PRODUCT**

Mr. George White, President
Brushy Creek Regional Utility Authority, Inc.
221 East Main Street
Round Rock, Texas 78664

Mr. Stephan L. Sheets
Sheets & Crossfield, P.C.
309 E. Main Street
Round Rock, Texas, 78664

VIA FIRST CLASS U.S. MAIL AND U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Brushy Creek Regional Utility Authority, Inc.'s Proposed Project in the Village of Volente

Dear Mr. White and Mr. Sheets:

Our law firm serves as the city attorneys for the Village of Volente ("Volente").

We understand from BCRUA's past public announcements and the June 20, 2012 board meeting that BCRUA is taking steps to proceed with Phase 2 of the BCRUA Regional Water Supply Project. At the Village's request, I am writing to inform you and BCRUA of certain zoning requirements, land-use restrictions, health and safety regulations, and other Volente ordinances that BCRUA and its member cities must comply with if they wish to proceed with the proposed BCRUA project facilities and operations within Volente and its extraterritorial jurisdiction ("ETJ").

BCRUA's project is, of course, a significant one requiring an enormous amount of public funds and substantial advanced planning and engineering. Given the substantial amount of money, time, and energy that has been committed to this project, it is crucial that BCRUA, its contractors, and the member cities be aware and remain mindful of Volente's code of ordinances and the many regulations and permitting requirements that govern all construction activities and other operations within the Volente proper and Volente's ETJ. These regulations and permits are especially important with respect to the BCRUA project, given its unusually large size and scope, and the enormous impacts it

will have on Volente and its residents if Phase 2 proceeds as currently planned.

I understand that, as part of securing a recommitment of funds from the Texas Water Development Board for Phase 2 of the project, BCRUA must secure certain federal and state permits. The Village Council and I believe that BCRUA's securing of all necessary permits from Volente and its compliance with all Volente ordinances and regulations are equally as important and absolutely necessary for Phase 2 of the project to proceed.

Consequently, by this letter, I would like to provide you and BCRUA with useful regulatory information and, at the same time, facilitate a meaningful and productive channel of communication between BCRUA and Volente.

Please note that the ordinances and regulations cited in this letter are not intended to be an exhaustive list of those applicable to the BCRUA project; rather, they are a preliminary overview of those that the Village Council and I believe are likely to be applicable, based on our current understanding of the nature and scope of the BCRUA project.

I. Zoning and Land-Use Regulations

As part of Phase 2 of the project, BCRUA intends to construct and operate a pumping station for the water retrieved from the permanent deep-water intake facility at "Site 4," which is on a residential lot in a residential neighborhood off of Jackson Street in Volente. This property is zoned R-1 Single Family Residential and is entirely within the municipal boundaries of Volente. It is also our understanding that the project's permanent deep-water intake facility will be located close to the residential property in a portion of Lake Travis that is within Volente's ETJ.

You should be aware that the proposed pumping station for the deep-water intake facility is not a permitted use within an R-1 Single Family Residential district, or any residentially zoned area for that matter. "Pumping plants" used to pump water to multiple households in residential subdivisions within the Village may be allowed under some circumstances if a Conditional Use Permit is applied for and granted by the Village Council. See Zoning Regulations, Sec. 30.114(d)(2)(A) (Ordinance No. 2004-O-32, as amended by Ordinance 2007-O-78 on May 6, 2007, *et al.*) (Attached hereto as Exhibit A).

BCRUA's proposed pumping station, however, is a municipal facility that will serve other users than multiple households in a residential subdivision within Volente and therefore does not qualify for a Conditional Use Permit under Volente's Zoning Regulations. See Village Planning and Zoning Meeting Minutes, Sec. 4., from April 4, 2007 and Village Council Meeting Minutes, Sec. 3.b., from Tues., April 17, 2007 (enclosed herewith collectively as Exhibit B). The Village Planning and Zoning Commission recommended, and the Village Council agreed, that Conditional Use Permits should be allowed in residentially zoned areas under certain circumstances to allow residential developers to provide water to multiple households from a common well using a pumping plant if necessary and appropriate. In any event, a Conditional Use Permit is subject to meeting certain conditions or procedures established by the Council, and no conditional use may be permitted in any location where it will be inconsistent with the existing adjacent and nearby uses. See Zoning Regulations, Sec. 30.105, Sec. 30.133.

Consequently, BCRUA will need to file a zoning change application with the Village before proceeding with the Project at proposed Site 4. The policies, review criteria, and factors considered by

the Council when considering zoning change applications are found in Section 30.134(a) of the enclosed Zoning Regulations. Possible alternative zoning categories that would permit the proposed pumping station include Light or Heavy Industrial, Heavy Commercial, or a Government or Institutional District.

The proposed pumping station and water transmission lines are also “Water and Wastewater Facilities” that are regulated under Chapter 40 of the Village’s Code of Ordinances governing the construction of water and wastewater lines, pumping stations, water intakes, and other water and wastewater collection and treatment facilities. *See* Ordinance 2007-O-80 (Attached hereto as Exhibit C).

This ordinance requires that all such facilities be sited, constructed, and expanded in an orderly manner compatible with the public health, safety, and welfare of its citizens, as determined taking into consideration specific factors enumerated in Section 40.007(c) and other sections of the ordinance. *See* Ordinance 2007-O-80, § 40.002. Prior to filing any application for the construction or expansion of water facilities, a utility, person, or entity proposing to construct or expand such facilities within Volente must submit for the Village Council’s consideration a minimum of three (3) substantially different and geographically distinct routes or locations for the proposed facilities. *See* Ordinance 2007-O-80, § 40.007(b). After conducting public hearings, the Village Council may determine which of the proposed sites or routes may be used. *See* Ordinance 2007-O-80, §§ 40.007(d), 40.008.

II. Site Development Regulations

Because the proposed deep-water intake plant, pumping station, and related pipelines are nonresidential in nature and are for infrastructure or public purposes, BCRUA will also need to comply with the Village’s Site Development Regulations, which are found in Articles 33.300 and 33.400 of the Village’s Code of Ordinances (Enclosed herewith as Exhibit D). These regulations are very comprehensive and involve numerous procedural requirements and regulatory approvals that are too extensive to attempt to summarize here. No site development permit, building permit, or nonpoint source pollution control permit may be issued for BCRUA’s development until a site plan and all other required engineering and construction plans are first approved by the Village. *See* Site Development Regulations, § 33.316(A) (as amended by Ordinance 2007-O-75 on April 1, 2007).

The Site Development Regulations are comprehensive and, just to name a few, include regulations relating to potential traffic impacts; fencing, walls, and screening; landscaping and land clearing; drainage; cut and fill; slope limits; excavation; soil piles and temporary construction and spoil piles; erosion and sedimentation controls; construction in public rights of way; cleaning and maintenance of streets during construction; easements; building and structure designs; construction standards; and lighting and glare standards. The use of any public rights of way within the Village for the project’s improvements will also be subject to the conditions and approvals required under Division 8 (Sections 33.382 – 33.392) of the Site Development Regulations.

Due to the volume and complexity of these regulations, the Village recommends that all applicants avail themselves of the advice and assistance of the Village’s administrative officers far in advance of any proposed project and submission of any formal application. *See* Site Development Regulations, § 33.314. The Village invites BCRUA to take advantage of this assistance as early as practicable. Doing so may result in the added benefit of fostering better communications and cooperation between Volente and BCRUA.

III. Noise Control Regulations

BCRUA's construction and operation of its project facilities are also subject to Volente's Noise Control Regulations contained in Ordinance No. 2008-O-88, which is enclosed herewith as Exhibit E. These regulations prescribe specific sound level limits, as well as day and hour timeframes, for loading and unloading activities, construction-related motor vehicles, general construction work, and, more specifically, the construction and ongoing operation of industrial and utility facilities, such as those planned by BCRUA. *See, e.g.*, Ordinance No. 2008-O-88, Sections 44.005 c. (3), (4), (11); and 44.007 (as amended by Ordinance No. 2009-O-110).

A Noise Control Permit for Construction must be obtained from the Village before any construction of an industrial or utility facility may commence, and a Noise Control Permit for Operation must be obtained from the Village before any industrial or utility facility may begin operations. *See* Section 44.005 c. (11)(A), (B).

Upon filing an application for a Noise Control Permit, an applicant must file an Environmental Noise Impact Analysis (also known as an acoustical analysis), as well as a Noise Abatement Plan. *See* Section 44.005 c. (11)(E). One of the primary factors considered by the Village in determining whether a Noise Control Permit will be issued is the sound impact that the proposed construction and operations of any industrial or utility facility, as well as any associated traffic, will have on surrounding residential property boundaries, both during the daytime and nighttime. *See* Section 44.005 c. (11)(E)(1).

IV. Blasting Regulations

BCRUA announced at its June 20, 2012 board meeting that it intends to bore a tunnel for the proposed water pipeline through Volente, rather than use the open-cut method originally proposed. While this alternative proposal is highly preferable and will mitigate some of the negative impacts of the project's construction on Volente and its residents, some aspects of the project may nevertheless require blasting. Volente's Blasting Ordinance regulates blasting activities and all associated sounds and vibrations. *See* Ordinance No. 2008-O-91, which is enclosed herewith as Exhibit F.

This ordinance requires, among other things, a blasting permit, which may only be issued following an application, the filing of a blasting plan, a pre-blasting ambient sound report, water well tests, pre-blast surveys, and at least one public hearing. *See* Section 49.003. In addition, all blasting-related activities must comply with the ordinance's limits, monitoring requirements, licensing and insurance requirements, and all other restrictions.

V. Water Quality Ordinance and Traffic Restrictions on Lime Creek Road

As a condition to undertaking any land development or land disturbance activities within the Village's corporate limits or its ETJ, BCRUA must comply with all plans, permits, buffer zones, and other requirements imposed by Volente's Water Quality Ordinance, Ordinance No. 2004-1019-2. This ordinance incorporates LCRA's Non-Point Source Pollution Control Manual and the City of Austin's Drainage Criteria Manual and Environmental Criteria Manual and is enclosed herewith as Exhibit G.

BCRUA and its contractors should also be aware of and comply with the Village's regulations of truck traffic over Lime Creek Road. The Village's Traffic Restrictions on Lime Creek Road are located in Ordinance No. 2005-O-57, which is enclosed herewith as Exhibit H. Given the narrow,

winding conditions of Lime Creek Road, a two-lane road with no shoulders, trucks with four or more axles are prohibited from traveling through the Village Volente on Lime Creek Road. This ban does not apply to the delivery of materials transported by trucks with four or more axles to properties located within the Village's corporate boundaries.

VI. Closing

To reiterate, the ordinances and regulations cited in this letter are a preliminary overview of those that the Village Council and I believe are likely to be applicable, based on our current understanding of the nature and scope of the BCRUA project. They are not intended to be an exhaustive list of all ordinances and regulations applicable to the BCRUA project.

To date, there have been few formal communications between BCRUA and Volente regarding the scope and details of BCRUA's project within the Village of Volente. And, to my knowledge, there has been virtually no discussion of the zoning requirements, land-use restrictions, health and safety regulations, and other Volente ordinances (many of which are cited above) that BCRUA, its contractors, and BCRUA's member cities must comply with if they intend to proceed with the proposed project facilities within Volente and its ETJ.

I am confident you will agree that, given the huge scope, cost, and importance of the BCRUA project to its member cities, it is critical that BCRUA and Volente begin communicating in a more direct and productive manner and share important information about the project and all applicable regulatory procedures and requirements.

I encourage you to contact me or Volente's Mayor, Justine Blackmore-Hlista, to move forward with this dialogue. I also invite you to begin engaging with the Village of Volente City Council. The Council normally meets at 7:00 p.m. on the third Tuesday of each month at the Village of Volente Fire Department and Community Center located at 15406 FM 2769, Volente, Texas, 78641.

Sincerely,

SCANLAN, BUCKLE & YOUNG, P.C.

W. Thomas Buckle

ATTORNEYS FOR
THE VILLAGE OF VOLENTE

Enclosures

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